

Public Chapter 476

HOUSE BILL NO. 1055

By Representatives Buck, Newton, Stamps, Godsey, Mumpower, Boner, Bittle, Burchett, Garrett, Dunn, Roach, McDaniel, Sargent, Fitzhugh, Givens, Jackson, Sands, Ronnie Cole, Phelan, Maddox, Cross, Hargrove, Whitson, White, Ford, Sharp, Boyer, Fraley, Beavers, Ferguson

Substituted for: Senate Bill No. 1170

By Senators Ramsey, Henry, McNally, Williams, Miller

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, relative to handgun permits.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1351, is amended by deleting the section in its entirety:

(a) The citizens of this State have a right to keep and bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime.

(b) Any resident of Tennessee who has reached twenty-one (21) years of age may apply to the Department of Safety for a handgun carry permit. If the applicant is not prohibited from purchasing or possessing a firearm in this State pursuant to § 39-17-1316 or § 39-17-1307(b), § 18 U.S.C. § 922(g) or any other state or federal law and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant.

(c) The application for a permit shall be on a standard form developed by the department. The application shall clearly state in bold face type directly above the signature line that an applicant who, with intent to deceive, makes any false statement on such application is guilty of the felony offense of perjury pursuant to Tennessee Code Annotated, Section 39-16-702. The following are eligibility requirements for obtaining a handgun carry permit and the application shall require the applicant to disclose and confirm compliance with, under oath, the following information concerning the applicant and the eligibility requirements:

- (1) Full legal name and any aliases;
- (2) Addresses for the last five (5) years;
- (3) Date of birth;
- (4) Social security number;
- (5) Physical description (height, weight, race, sex, hair color and eye color);

(6) That the applicant has not been convicted of a criminal offense punishable for a term exceeding one (1) year which does not include any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices, or;

(7) That the applicant is not currently under indictment or information for any criminal offense punishable by a term exceeding one (1) year which does not include any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices, or;

(8) That the applicant is not currently subject to any order of protection and, if so, the applicant shall provide a copy of such order;

(9) That the applicant is not a fugitive from justice;

(10) That the applicant is not an unlawful user of or addicted to alcohol or any controlled substance and the applicant has not been a patient in a rehabilitation program or hospitalized for alcohol or controlled substance abuse or addiction within ten (10) years from the date of application;

(11) That the applicant has not been convicted of the offense of driving under the influence of an intoxicant in this or any other State two (2) or more times within ten (10) years from the date of the application and that none of such convictions has occurred within five (5) years from the date of application or renewal;

(12) That the applicant has not been adjudicated as a mental defective; has not been committed to or hospitalized in a mental institution; has not had a court appoint a conservator for the applicant by reason of a mental defect; has not been judicially determined to be disabled by reason of mental illness, developmental disability or other mental incapacity; and has not, within seven (7) years from the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in § 33-6-104, because of mental illness;

(13) That the applicant is not an alien and is not illegally or unlawfully in the United States;

(14) That the applicant has not been discharged from the Armed Forces under dishonorable conditions;

(15) That the applicant has not renounced his or her United States citizenship;

(16) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(33);

(17) That the applicant is not receiving social security disability benefits by reason of alcohol dependence, drug dependence or mental disability; and

(18) That the applicant has not been convicted of the offense of stalking.

(d)(1) In addition to the information required under subsection (c), the applicant shall be required to provide two (2) full sets of classifiable fingerprints at the time the application is filed with the department. Such fingerprints may be taken by the department at the time the application is submitted or the applicant may have such fingerprints taken at any sheriff's office and submit such fingerprints to the department along with the application and other supporting documents. The sheriff may charge a fee not to exceed five dollars (\$ 5.00) for taking the applicant's fingerprints. At the time an applicant's fingerprints are taken either by the department or a sheriff's office, such applicant shall be required to present a photo identification. If the person requesting fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or sheriff shall refuse to take such fingerprints. The department shall also be required to photograph the applicant in a manner that is suitable for use on the permit.

(2) An applicant shall also be required to present a photo identification to the department at the time of filing the application. If the name on the photo identification, name on the application and name on the fingerprint card, if taken by a sheriff, are not the same, the department shall refuse to accept the application. If the person whose picture appears on the photo identification is not the same as the applicant, the department shall refuse to accept the application.

(e) The department shall also require an applicant to submit proof of the successful completion of a department approved handgun safety course. Such course shall include both classroom hours and firing range hours. An applicant shall not be required to comply with the firing range provisions of this subsection if such applicant submits proof to the department that within five (5) years from the date the application for a handgun carry permit is filed the applicant has:

(1) been certified by the peace officer standards and training commission; or

(2) successfully completed training at the law enforcement training academy; or

(3) successfully completed the firearms training course required for armed security officer/guard registration, pursuant to § 62-35-118(b); or

(4) successfully completed all handgun training of not less than four (4) hours as required by any branch of the military.

(f) The department shall make applications for permits available for distribution at any location where the department conducts driver license examinations.

(g)(1) Upon receipt of a permit application, the department shall:

(A) Forward two (2) full sets of fingerprints of the applicant to the Tennessee Bureau of Investigation; and

(B) Send a copy of the application to the sheriff of the county in which the applicant resides.

(2) Within thirty (30) days of receiving an application, the sheriff shall provide the department with any information concerning the truthfulness of the applicant's answers to the eligibility requirements of subsection (c) that is within the knowledge of such sheriff.

(h) Upon receipt of the fingerprints from the department, the Tennessee Bureau of Investigation shall:

(1) Within thirty (30) days from receipt of the fingerprints, conduct such computer searches to determine the applicant's eligibility for a permit under subsection (c) of this section as are available to the bureau based solely upon the applicant's name, date of birth and social security number and send the results of such searches to the department;

(2) Conduct a criminal history record check based upon one (1) set of the fingerprints received and send the results to the department; and

(3) Send one (1) set of the fingerprints received from the department to the Federal Bureau of Investigation, request a federal criminal history record check based upon such fingerprints, as long as such service is available, and send the results of such check to the department.

(i) The department shall deny a permit application if it determines from information contained in the criminal history record checks conducted by the Tennessee and Federal Bureaus of Investigation pursuant to subsection (h) of this section, or from other information that comes to the attention of the department, that the applicant does not meet the eligibility requirements of this section. The department shall not be required to confirm the applicant's eligibility for a permit beyond the information received from the Tennessee and Federal Bureaus of Investigation and the sheriffs, if any.

(j) The department shall not deny a permit application if:

(1) The existence of any arrest or other records concerning the applicant for any indictment, charge or warrant have been judicially or administratively expunged; or

(2) An applicant's conviction has been set aside by a court of competent jurisdiction; or

(3) The applicant, who was rendered infamous or deprived of the rights of citizenship by judgment of any State or Federal Court, has had his or her full rights of citizenship duly restored pursuant to procedures set forth within Title 40, Chapter 29, or other Federal or State law; provided, however, the provisions of this subdivision shall not apply to any person who has been convicted of burglary, any felony offense involving violence or use of a firearm or any felony drug offense involving a Schedule I, II, III, IV or V controlled substance. If the applicant has been convicted of a felony drug offense involving a Schedule VI controlled substance, the provisions of this subdivision shall not apply if

such offense occurred within ten (10) years of the date of application or renewal.

(k) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of such denial. The written notice shall state the specific factual basis for the denial. It shall include a copy of any reports, records and/or inquiries reviewed or relied upon by the department.

(l) The department shall issue a permit to an applicant not prohibited from obtaining a permit under this section no later than ninety (90) days after the date the department receives the application. A permit issued prior to the department's receipt of the Tennessee and Federal Bureau of Investigation's criminal history record checks based upon the applicant's fingerprints shall be subject to immediate revocation if either such record check reveals that the applicant is not eligible for a permit pursuant to the provisions of this section.

(m) A permit holder shall not be required to complete a handgun safety course to maintain or renew a handgun carry permit. No permit holder shall be required to complete any additional handgun safety course after obtaining a handgun carry permit.

(n) A permit issued pursuant to this section shall be good for four (4) years and shall entitle the permit holder to carry any handgun(s) which the permit holder legally owns or possesses. The permit holder shall have the permit in the holder's immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.

(o) The permit shall be issued on a wallet-sized laminated card of the same approximate size as is used by the State of Tennessee for driver licenses and shall contain only the following information concerning the permit holder:

(1) The permit holder's name, address, date of birth and social security number;

(2) A description of the permit holder by sex, height, weight and eye color;

(3) A color photograph of the permit holder; and

(4) The permit number and expiration date.

(p)

(1) The department shall charge an application and processing fee of one hundred fifteen dollars (\$115). Such fee shall cover all aspects of processing the application and issuing a permit. In addition to any other portion of the permit application fee that goes to the Tennessee Bureau of Investigation, fifteen dollars (\$15.00) of such fee shall go to the bureau for the sole purpose of updating and maintaining its fingerprint criminal history data base. On an annual basis the Comptroller of the Treasury shall audit the bureau to ensure that such extra fifteen dollars (\$15.00) received from each handgun permit application fee is being used exclusively for the purpose set forth in this subsection. By February 1 of each year the bureau shall provide documentation to the Senate and House Judiciary Committees that such extra fifteen dollars (\$15.00) is being used exclusively for the intended

purposes. Such documentation shall state in detail how the money earmarked for fingerprint data base updating and maintenance was spent, the number and job descriptions of any employees hired and the type and purpose of any equipment purchased.

(2) The provisions of subpart (p)(1) increasing each permit application fee by fifteen dollars (\$15.00) for the purpose of fingerprint data base updating and maintenance shall not take effect if the General Appropriation Act provides a specific appropriation in the amount of two hundred fifty thousand dollars (\$250,000), to defray the expenses contemplated in subdivision (p)(1). If such appropriation is not included in the General Appropriations Act, such fifteen dollar (\$15.00) permit fee increase imposed by subpart (p)(1) shall take effect on July 1, 1997, the public welfare requiring it.

(q) Prior to the expiration of a permit, a permit holder may apply to the department for the renewal of such permit by submitting, under oath, a renewal application with a renewal fee of fifty dollars (\$50.00). The renewal application shall be on a standard form developed by the Department of Safety and shall require the applicant to disclose, under oath, the information concerning the applicant as set forth in subsection (c), and shall require the applicant to certify that such applicant still satisfies all the eligibility requirements of this section for the issuance of a permit. In the event the permit expires prior to the department's approval or issuance of notice of denial regarding such renewal application, the permit holder shall be entitled to continue to use the expired permit; provided, that the permit holder shall also be required to prove by displaying a receipt for the renewal application fee that the renewal application was delivered to the department prior to the expiration date of the permit.

(r)

(1) A handgun permit or license issued in another state shall be valid in this State according to its terms if:

(A) The statute establishing the permit or licensing procedure in the issuing state specifically provides that permits or licenses issued in other states are valid in such issuing state; and

(B) The eligibility requirements for obtaining a handgun permit or license in such issuing state are substantially similar to the eligibility requirements in this State.

(2) The Commissioner of Safety shall be the sole judge of whether the eligibility requirements in another state are substantially similar to the requirements in this State. The department shall maintain a list of the states that meet the reciprocity requirements of this subsection. Such list shall be available to anyone upon request.

If a person with a gun permit from another state decides to become a resident of Tennessee, such person must obtain a Tennessee gun permit. Such permit may be issued based on the person having a permit from another state provided such other state meets the criteria of subdivisions (1) and (2).

(s)

(1) The department shall make available, on request and payment of a reasonable fee to cover the costs of copying, a statistical report that includes the number of permits issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender and zip code of the applicant or permit holder and the reason for any permit revocation or suspension. By January 1 of each year, a copy of such statistical reports for the preceding calendar year shall be provided to each member of the General Assembly.

(2)

(A) The department shall maintain statistics related to responses by law enforcement agencies to incidents in which a person who has a permit to carry a handgun under this section is arrested and booked for any offense.

(B) The department by rule promulgated pursuant to Tennessee Code Annotated, Title 4, Chapter 5 shall adopt procedures for state and local law enforcement officials to report the information required by subpart (A) to the department.

(t) Any law enforcement officer of this State or of any county or municipality may, within the realm of the officer's lawful jurisdiction and when the officer is acting in the lawful discharge of the officer's official duties, disarm a permit holder at any time when the officer reasonably believes it is necessary for the protection of the permit holder, officer or other individual(s). The officer shall return the handgun to the permit holder before discharging the permit holder from the scene when the officer has determined that the permit holder is not a threat to the officer, to the permit holder, or other individual(s) provided that the permit holder has not violated any provision of this section and provided the permit holder has not committed any other violation that results in the arrest of the permit holder.

(u) Substantial compliance with the requirements of this section shall provide the department and any political subdivision thereof with immunity from civil liability alleging liability for issuance of the permit.

(v) All handgun carry permit applications properly filed according to the procedure in effect immediately prior to the effective date of this act shall be acted upon by the department in accordance with the procedure established by this subsection. Within thirty (30) days from the effective date of this act, the department shall issue a handgun carry permit, subject to later suspension or revocation as provided in § 39-17-1352, to all applicants whose:

(1) Applications were properly filed under the permit procedure in effect immediately prior to the effective date of this act;

(2) Applications have been pending for at least ninety (90) days;  
and

(3) Criminal history record check results conducted by the Tennessee Bureau of Investigation based solely upon the applicant's name, date of birth and social security number have been returned to and are in the possession of the department.

(w) Any permit issued pursuant to this section shall be deemed a "license" within the meaning of Title 36, Chapter 5, Part 7, dealing with the enforcement of child support obligations through license denial and revocation.

SECTION 2. Tennessee Code Annotated, Section 39-17-1352, is amended by deleting the section in its entirety and substituting instead the following:

(a) The department shall suspend or revoke a handgun permit upon a showing by its records or other sufficient evidence that the permit holder:

(1) Is prohibited from purchasing a handgun under applicable state or federal law;

(2) Has not accurately disclosed any material information required by § 39-17-1351;

(3) Poses a material likelihood of risk of harm to the public;

(4) Has been arrested for a felony involving the use or attempted use of force, violence or a deadly weapon or a felony drug offense;

(5) Has been convicted of a felony;

(6) Has violated any other provision of §§ 39-17-1351 - 39-17-1360; or

(7) Has at any time committed an act or omission or engaged in a pattern of conduct that would render the permit holder ineligible to apply for or obtain a permit under the eligibility requirements of § 39-17-1351.

(b)

(1) It is an offense for a permit holder to knowingly fail or refuse to surrender to the department a suspended or revoked handgun permit within ten (10) days from the date appearing on the notice of suspension or revocation sent to such permit holder by the department.

(2) A violation of this subsection is a Class A misdemeanor.

(c)

(1) Upon the suspension or revocation of a permit, the department shall send notice of the suspension or revocation to the permit holder and the appropriate local law enforcement officers. Such notice shall state the following:

(A) That the permit has been immediately suspended or revoked;

(B) That the permit holder must surrender the permit to the department within ten (10) days of the date appearing on the notice;



(C) That it is a Class A misdemeanor punishable by up to one (1) year in jail for the permit holder to knowingly fail or refuse to surrender the permit to the department within such ten (10) day period;

(D) That if the permit holder does not surrender the suspended or revoked permit within the ten (10) day period, a law enforcement officer will be directed to take possession of the permit; and

(E) That the permit holder has thirty (30) days from the date appearing on the notice of suspension or revocation to request a hearing on such suspension or revocation.

(2) If the permit holder fails to surrender the suspended or revoked permit as required by this section, the department shall issue authorization to the appropriate local law enforcement officials to take possession of the suspended or revoked permit and send it to the department.

(d) The applicant shall have a right to petition the General Sessions Court of his or her county of residence for judicial review of departmental denial, suspension or revocation of a permit. At any such review by the General Sessions Court, the department shall be represented by the District Attorney General.

(e)

(1) If a permit holder is arrested and charged with burglary, a felony drug offense or a felony offense involving violence or the use of a firearm, then the court first having jurisdiction over the permit holder with respect to such felony charge shall inquire as to whether such person has been issued a Tennessee handgun carry permit, order the permit holder to surrender the permit and send the permit to the department with a copy of the court's order which required the surrender of the permit. The department shall suspend the permit pending a final disposition on the felony charge against the permit holder.

(2) If a permit holder is arrested and charged with any felony offense other than an offense subject to the provisions of subdivision (1) above, then the court first having jurisdiction over the permit holder with respect to such felony charge shall inquire as to whether such person has been issued a Tennessee handgun carry permit, order the permit holder to surrender the permit and send the permit to the department with a copy of the court's order which required the surrender of the permit unless the permit holder petitions the court for a hearing on such surrender. If the permit holder does petition the court, such court shall determine whether the permit holder will present a material risk of physical harm to the public if released and allowed to retain the permit. If the court determines that the permit holder will present such a material risk it shall condition any release of the permit holder, whether on bond or otherwise, upon the permit holder's surrender of the permit to the court. Upon surrender of the permit, the court shall send the permit to the department with a copy of the court's order which required the surrender of the permit and the department shall suspend the permit

pending a final disposition of the felony charges against the permit holder.

(3) If the permit holder is acquitted on the charge or charges, the permit shall be restored to the holder and the temporary prohibition against the carrying of a handgun shall be lifted.

(4) If the permit holder is convicted of the charge or charges, the permit shall be revoked by the court and such revocation shall be noted in the judgment and minutes of the court. The court shall send the surrendered permit to the department.

(5) If the permit holder is placed on pre-trial diversion or judicial diversion, the permit holder's privilege to lawfully carry a handgun shall be suspended for the length of time the permit holder is subject to the jurisdiction of the court. The court shall send the surrendered permit to the department.

(f)

(1) If a permit holder is convicted of a Class A misdemeanor offense, the permit holder shall surrender the permit to the court having jurisdiction of the case for transmission to the department.

(2) The permit holder shall not be permitted to lawfully carry a handgun or exercise the privileges conferred by the permit for the term of the sentence imposed by the court for the offense or offenses for which the permit holder was convicted.

(g) In order to reinstate a permit suspended pursuant to subsections (e) or (f) of this section, the permit holder shall pay a reinstatement fee of twenty-five dollars (\$25.00) with one-half (1/2) of such fee payable to the Department of Safety and one-half (1/2) payable to the court that suspended the permit.

(1) Prior to the reinstatement of the permit, the permit holder shall have paid in full all fines, court costs and restitution, if any, required by the sentencing court.

(2) Failure to complete any terms of probation imposed by the court shall be a bar to reinstatement of the permit.

(3) Prior to reissuance of the permit, the department shall verify that the permit holder has complied with all reinstatement requirements of this subsection.

SECTION 3 Tennessee Code Annotated, Section 39-17-1308(a)(2) is amended by deleting the language "§ 39-17-1315" and substituting instead the language "§ 39-17-1315 or § 39-17-1351".

SECTION 4. Tennessee Code Annotated, Section 39-17-1321 is amended by deleting the section in its entirety and substituting instead the following:

(a) Notwithstanding whether a person has a permit issued pursuant to § 39-17-1315 or § 39-17-1351, it is an offense for a person to possess a handgun while under the influence of alcohol or any controlled substance.

(b) Violation of this section is a Class A misdemeanor.

SECTION 5. Tennessee Code Annotated, Section 39-17-1358, is amended by deleting subsection (c) and substituting instead the following:

(c) Except as otherwise specifically provided in §§ 39-17-1351 and 39-17-1352, a violation of §§ 39-17-1351--39-17-1360 is a Class B misdemeanor punishable only by a fine not to exceed five hundred dollars (\$500).

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. Section 1(v) of this act shall take effect upon becoming a law, the public welfare requiring it. All other provisions of this act shall take effect on July 1, 1997, the public welfare requiring it.